

Montana Water Court
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FILED
05/12/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41U-0086-R-2023
Stern, Anika
3.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
DEARBORN RIVER BASIN (41U)
PRELIMINARY DECREE

CLAIMANT: In I Am We Trust

OBJECTORS: Frank C. Thompson; Fay Thompson

NOTICE OF INTENT TO APPEAR: Dearborn Ranch LLC

CASE 41U-0086-R-2023
41U 97016-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. In I Am We Trust is the current record owner of claim 41U 97016-00.
2. Claim 41U 97016-00 has been involved in Water Court proceedings twice already.
3. A Master's Report was issued on February 5, 1987 in which the flow rate for claim 41U 97016-00 was increased, the maximum acres reduced, and the place of use was modified.
4. After the issuance of the 1987 Master's Report, Frank C. Thompson and Fay Thompson filed a Late Objection. An issue remark was placed on claim 41U 97016-00 indicating the Thompson's Late Objection would be addressed during the Preliminary Decree.
5. In Case WC-2017-02, the flow rate of claim 41U 97016-00 was reduced.
6. Dearborn Ranch LLC filed a Notice of Intent to Appear on November 7, 2022.
7. An Order was issued on February 7, 2023 setting a deadline for Frank C. Thompson and Fay Thompson to indicate if they intend to pursue the Late Objection to claim 41U 97016-00 and to provide time for Dearborn Ranch LLC to indicate how the Notice of Intent to Appear concerns should be resolved. The Order Setting Filing Deadline indicated that if the Thompsons did not file anything by March 10, 2023, indicating whether they intend to pursue the Late Objection, this Water Master would conclude they do not intend to pursue the Late Objection. The following language was included in the Order:

Failure to comply with the terms of this Order may result in sanctions, up to and including entry of default and termination of a water right claim or dismissal of objections. Rule 22, W.R.Adj.R.
8. The Thompsons did not file anything by the deadline.
9. On April 17, 2023, Dearborn Ranch, LLC filed a statement indicating the Notice of Intent to Appear was filed for the purpose of monitoring proceedings identified

in the issue remark. The filing states: “Provided the claim remains as currently decreed . . . it is Dearborn Ranch’s position this case can be closed and a Master’s Report issued.”

PRINCIPLES AND CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

2. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

RECOMMENDATIONS

1. The Thompson’s Late Objection should be dismissed for failure to prosecute. The issue remark should be removed from claim 41U 97016-00.

2. Dearborn Ranch, LLC’s Notice of Intent to Appear should also be dismissed. The April 17, 2023 filing indicates their concerns have been resolved.

A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

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**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 97016-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: IN I AM WE TRUST
PO BOX 161
FORT SHAW, MT 59443 0161

Priority Date: JUNE 1, 1891

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 5.47 CFS

***Volume:** 3,200.00 AC-FT

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 427.60

Source Name: SOUTH FORK DEARBORN RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWSWSW	21	16N	5W	LEWIS AND CLARK

Period of Diversion: MAY 1 TO OCTOBER 31

Diversion Means: HEADGATE

Ditch Name: GIBSON-RENNIG DITCH

Reservoir: OFFSTREAM

<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
	NWSW	3	16N	5W	LEWIS AND CLARK

Diversion to Reservoir: DIVERSION # 1

Dam Height: 20.00 FEET

Depth: 16.50 FEET

Surface Area: 6.25 ACRES

Capacity: 41.25 ACRE-FEET

SEE THE RESERVOIR WORKSHEET IN THE CLAIM FILE FOR ADDITIONAL
RESERVOIR DATA.

Period of Use: MAY 1 TO OCTOBER 31

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	68.00		W2E2	3	16N	5W	LEWIS AND CLARK
2	154.00		S2	34	17N	5W	LEWIS AND CLARK

3	200.00	W2	3	16N	5W	LEWIS AND CLARK
4	5.60	SESWNE	34	17N	5W	LEWIS AND CLARK
Total:						
	427.60					

Remarks:

IMPLIED CLAIM NO. 41U 30117667. WAS AUTHORIZED AND GENERATED BASED ON INFORMATION IN THIS CLAIM.